

Exhibit D

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION
3 HONORABLE JAMES V. SELNA, U.S. DISTRICT JUDGE
4

5 UNITED STATES OF AMERICA,)
6 Plaintiff,) **CERTIFIED TRANSCRIPT**
7 vs.) Case No.
8 MICHAEL JOHN AVENATTI,) SACR-19-00061-JVS
9 Defendant.) **TRIAL DAY 20**
) **VOLUME 2**
)
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14 REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

15 FRIDAY, AUGUST 13, 2021

16 1:27 P.M.

17 SANTA ANA, CALIFORNIA
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I N D E X**WITNESSES****PAGE****JOHN DRUM, CALLED BY THE GOVERNMENT**

Cross-Examination by Mr. Avenatti (resumed)	7
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EXHIBITS

(None offered.)

1 **SANTA ANA, CALIFORNIA; FRIDAY, AUGUST 13, 2021**

2 **1:27 P.M.**

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4
01:27PM 5 **(Out of the presence of the jury.)**

6 MR. AVENATTI: I have an issue to raise before he
7 takes the stand, please.

8 THE COURT: Mr. Avenatti.

9 MR. AVENATTI: Yes, Your Honor. Following up on
01:27PM 10 what I raised before the break, I'm entitled to these e-mails
11 and these statements from Mr. Drum. I was entitled to them
12 before I started my cross-examination. I'd like them produced
13 immediately, and I would like an adjournment so that I can
14 review them before I continue my cross-examination of Mr. Drum.

01:27PM 15 During the break we had occasion to look for any
16 case law that provides that an expert called by the Government,
17 that somehow that exempts the Government from complying with
18 26.2 and *Jencks*. We can find no such case and no such statute.

19 I also -- and I'll represent I placed calls to three
01:28PM 20 attorneys with a collective of about 100 years criminal law
21 experience who never heard such a thing.

22 There's no question that the materials exist. The
23 witness's testimony could not be more clear. And none of the
24 information was produced, Your Honor. I was entitled to that
01:28PM 25 information before I began my cross-examination so I could

1 tailor my cross-examination accordingly.

2 THE COURT: No, sir. You were entitled to it by
3 statute after he finishes his direct.

4 MR. AVENATTI: Yes. If I misspoke, I apologize,
01:28PM 5 Your Honor. I thought I said before I started my
6 cross-examination.

7 THE COURT: All right.

8 Mr. Wyman.

9 MR. WYMAN: Your Honor, over the lunch break we
01:28PM 10 looked for any e-mails of substance relating to his testimony
11 for Mr. Drum.

12 And, again, I haven't had a chance research the
13 issue. My understanding with an expert is that substantive
14 work product like the exchange of drafts, for example, falls
01:28PM 15 within the work product exception. But with regard to
16 substantive e-mails, what we were able to find was virtually
17 nothing, and the stuff that we had found was like -- you know,
18 I was asking for the extent of their payment and the breakdown
19 of what that payment was for, and we had copied and pasted that
01:29PM 20 and put that into a disclosure letter to the defense.

21 We're happy to provide in camera what we were able
22 to find, which was, as I said, virtually nothing that I don't
23 think has already been disclosed. We're happy to provide that
24 in camera to the Court.

01:29PM 25 THE COURT: Why don't you do that. We're not going

1 to take an adjournment. If Mr. Drum needs to stay over the
2 weekend, so be it.

3 MR. AVENATTI: Your Honor, I would ask that the
4 Court direct the witness, Mr. Drum, to provide to the Court all
01:29PM 5 written communications with the Government, whether it be the
6 prosecutors or the agents, relating to his testimony in this
7 case. Because, Your Honor, the witness could not have been
8 more clear, for two-and-a-half years he has been communicating
9 by e-mail with the Government relating to this case. Any of
01:30PM 10 those written communications we're entitled to. Those are
11 statements of a witness.

12 There is no -- there is no work product exception to
13 the *Jencks* Act and Rule 26.2. And if counsel has any authority
14 for this proposition, I would ask for it. And, again, you
01:30PM 15 know, I'm repeating myself, but this morning I made this --

16 THE COURT: Please don't repeat yourself because the
17 jury is waiting.

18 MR. AVENATTI: Well, I made this point this morning,
19 Your Honor. It's not my job to elicit testimony from witnesses
01:30PM 20 on cross-examination that show that the Government hasn't
21 given --

22 THE COURT: Sir, we had this discussion. We had it
23 in detail before we took the recess. Thank you.

24 Bring the jury in, please.

01:31PM 25 **(In the presence of the jury.)**

1 case until it's submitted to you, and please don't do any
2 research.

3 Thanks very much. Have a good weekend.

4 THE COURTROOM DEPUTY: All rise.

04:11PM 5 **(Out of the presence of the jury.)**

6 THE COURT: Anything for the record before we
7 adjourn?

8 MR. SAGEL: I don't believe from the Government,
9 Your Honor.

04:11PM 10 THE COURT: Mr. Avenatti.

11 MR. AVENATTI: Your Honor, the defense would move
12 pursuant to Rule 29. What I would propose is that I -- if it's
13 acceptable, obviously, to the Court, that I be permitted to
14 argue it either on Monday sometime that's convenient to the
04:12PM 15 Court or on Tuesday morning. I know I still need to provide a
16 proffer to Your Honor for the two agents as well.

17 THE COURT: Well, we're going to do that today.

18 MR. AVENATTI: Understood.

19 THE COURT: That's fine. 8:00 o'clock Tuesday. If
04:12PM 20 you want to make a written submission as well, that's fine.

21 MR. AVENATTI: We probably will file something in
22 advance, Your Honor.

23 THE COURT: Okay.

24 If there's nothing else, let's adjourn to an
04:12PM 25 in-camera session.

1 MR. AVENATTI: Well, I have a couple things, but go
2 ahead if the Government has something.

3 THE COURT: Go ahead.

4 MR. AVENATTI: Your Honor, the other request that I
04:13PM 5 would make is, right now the terms of my temporary release
6 expire on Tuesday, the 17th. Judge Gardephe has ordered me to
7 self-surrender on September 15th. I'm waiting for my
8 designation. I expect to have it probably within the next
9 week. So I would ask that the temporary release be extended to
04:13PM 10 September 15th.

11 THE COURT: Any -- well, I know the Government's
12 position.

13 MR. AVENATTI: On the same terms and conditions,
14 Your Honor, obviously.

04:13PM 15 MR. SAGEL: I mean, I think our position is --
16 subject to all of our prior objections, Your Honor, our
17 position would be until the end of this trial. The last
18 request he made for temporary release was for preparation of
19 trial. There's nothing between the end of this trial and
04:13PM 20 September 15th that would require any further temporary
21 release.

22 MR. AVENATTI: Well, actually, Your Honor, we don't
23 know what's going to happen with the other counts yet. So
24 there would be a preparation issue.

04:14PM 25 THE COURT: Well, let's address that. I think our

1 trial date for the second phase is October 12.

2 MR. AVENATTI: But, in any event, Your Honor, I'm
3 not --

4 THE COURT: Let's deal with the immediate question
04:14PM 5 you posed. I'll continue you on the same terms and conditions
6 until Friday, September 3.

7 MR. AVENATTI: September?

8 THE COURT: 3.

9 MR. AVENATTI: 3?

04:14PM 10 THE COURT: 3.

11 MR. AVENATTI: Thank you, Your Honor.

12 THE COURT: Okay. If there's nothing further, let's
13 adjourn to the in-camera session.

14 MR. SAGEL: Your Honor, one quick question, just for
04:14PM 15 timing or practicalitywise.

16 With regards to what we said we would submit in
17 camera related to Mr. Drum, I can send that via e-mail to your
18 CRD probably over the weekend or after.

19 THE COURT: That's fine.

04:15PM 20 MR. SAGEL: I didn't know if it would get to you
21 over the weekend.

22 THE COURT: It will.

23 MR. SAGEL: Thank you. We'll do that then.

24 THE COURT: Okay.

04:15PM 25 MR. AVENATTI: And then, Your Honor, we have five

1 witnesses that we intend on calling on Tuesday. I'll provide
2 that list to the Government now.

3 THE COURT: Okay.

4 MR. AVENATTI: Along with the time estimates.

04:15PM 5 THE COURT: Okay. I think they're listening.

6 MR. AVENATTI: Well, I'm not going to do it orally.
7 I'll hand it to them once Your Honor is done.

8 THE COURT: Okay. Why don't you hand it to them.

9 MR. AVENATTI: I'm just going to write the time
04:15PM 10 estimates. It will be two minutes, Your Honor. Thank you.

11 **(Pause in proceedings.)**

12 MR. AVENATTI: Your Honor, one other issue, in
13 looking through the list and providing the time estimates. I
14 anticipate that Attorney Evan Jenness will testify on Tuesday.
04:16PM 15 Ms. Jenness previously represented me in connection with the --
16 with the arrest on the domestic violence allegation for which
17 there were never any charges.

18 We're going to have to figure out some fencing or
19 parameters relating to the cross-examination. Obviously, I
04:17PM 20 don't believe that that should go before the jury. I'm happy
21 to deal with it on Tuesday morning, but I want --

22 THE COURT: Well, you structure your direct such
23 that that topic is not opened.

24 MR. AVENATTI: Understood, Your Honor. I just
04:17PM 25 wanted to raise it for the Court, alert the Government. We can

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COUNTY OF LOS ANGELES)
)
STATE OF CALIFORNIA)

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Date: August 13, 2021

 /S/ DEBBIE HINO-SPAAN

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